



Northern District of Oklahoma, and further, Plaintiffs’ Motion for Leave seeks to deny Peterson the right to have “the last word” with regard to its Motion to Dismiss (Docket No. 75) and its Alternative Motion to Stay the Proceedings Pending Appropriate Regulatory Agency Action (Docket No. 90), which the federal and local rules recognize;

- ▶ Plaintiffs’ Motion for Leave neglects to set forth grounds to justify its request to perpetuate the briefing on Peterson’s Motions to Dismiss and to Stay. Rather than seeking to address any “new matter” raised in Peterson’s Replies in support of its Motions (Docket Nos. 149 and 147 respectively), Plaintiffs’ proposed “Supplemental Brief” merely re-hashes arguments already advanced in its prior Response to Peterson’s Motions (Docket No. 134); and
- ▶ Plaintiffs Motion for Leave fails to accurately represent that Peterson’s counsel responded to Plaintiffs’ counsel’s request for consent to their Motion by stating that Peterson would have no objection to Plaintiffs’ Motion for Leave, provided that Plaintiffs advise the Court that consent was conditioned on the Court granting Peterson leave to file a response to Plaintiffs’ brief.

### **ARGUMENTS AND AUTHORITIES**

Before the Court is Plaintiffs’ request for the opportunity to perpetuate the briefing on two Motions that are fully at issue before the Court.<sup>1</sup> Plaintiffs’ request could arguably have some merit had they set forth any grounds to justify additional briefing, such as Peterson’s inclusion of new

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<sup>1</sup> Although Peterson’s Motion to Dismiss and alternative Motion to Stay the Proceedings Pending Appropriate Regulatory Agency Action are at issue by virtue of being fully briefed, Peterson submits that these Motions should not be decided by the Court until it first disposes of the Defendants’ Motion to Stay Proceedings (Docket No. 125) in deference to the pending decisions to be made by the United States Supreme Court in *State of Arkansas v. State of Oklahoma*, No. 220133 (Original 2005).

matters in either of its Reply briefs on its Motions, but Plaintiffs have not offered the Court such justification, and as the proposed “Supplemental Brief” reflects, Plaintiffs’ motives are to simply re-hash previously asserted positions, to re-argue previously cited cases, and to usurp Peterson’s right to have the final word on the Motions it has presented to the Court. Notwithstanding the impropriety of Plaintiffs’ proposed filing, Peterson’s counsel advised Plaintiffs’ counsel, Mr. Riggs, that Peterson would not object to the Motion for Leave provided that if leave was granted, Peterson would likewise be allowed to respond. Plaintiffs’ rejection of Peterson’s reasonable proposal and their venture forward with this opposed Motion for Leave seeking for the Court to grant them the opportunity to argue further on these issues while denying Peterson the right to respond illuminates the objectives truly being pursued in the Motion at bar.

It is entirely within the Court’s discretion to deny Plaintiffs’ request to file a supplemental brief in opposition to Peterson’s Motions based on the lack of stated justification and the substance of the proposed filing. The specific parameters for motion practice within the Northern District are set forth in Local Rule 7.1, which recognizes three permitted filings per motion – the original motion and brief; the opponent’s response and brief; and the movant’s reply and brief, limited solely to new matters raised in the response. Rule 7.1(h) recognizes that the Court may allow supplemental briefs on motions, but acknowledges that they are “not encouraged.”

For the Court to analyze whether Plaintiffs’ proposed “Supplemental Brief” is justified, it should weigh substance over form. Here, what Plaintiffs’ are attempting to characterize as a “supplement” is in fact a sur-reply. It is clear from the substance of the “Supplemental Brief” that Plaintiffs are not seeking leave to supplement their Response to Peterson’s Motion with new authorities or even new arguments. Not at all – Plaintiffs’ proposed filing serves only one purpose – to re-assert their arguments in opposition to arguments and statements set forth by Peterson in its

Replies in support of its two underlying Motions. Plaintiffs' admit as much in their Motion for Leave by reciting that the additional brief is necessary to "clarify and correct the record as to [Peterson's] certain legal contentions and factual characterizations [in its Reply briefs]." Mot. for Leave at 1. This is nothing more than Plaintiffs' attempt to get one last "is too" to Peterson's "is not" – a notion the Local Rules do not and this Court should not abide. Since the proposed filing is in the form of a sur-reply rather than a supplement, the Court should hold Plaintiffs to the standard for permitting reply briefs. By failing to set forth in their Motion for Leave or their proposed "Supplemental Brief" that Peterson's Replies raised new issues of a material nature that must be responded to, Plaintiffs' have failed to justify not only this additional requested filing, but also their attempt to deny Peterson the right to file the final brief on these issues as contemplated by the federal and local rules.

With regard to this final point, should the Court choose to allow Plaintiffs' to file their proposed brief, Peterson requests that the Court allow it to file a response.

WHEREFORE, having set forth its arguments and authorities in opposition to Plaintiffs' Motion for Leave, Peterson respectfully requests the Court deny the Motion, or in the alternative, grant it leave to file a response to Plaintiffs' Supplemental Brief.

Respectfully submitted,

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